

FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: South Arkansas Refuge Complex

Use: Use of Drones/UASs on Felsenthal, Pond Creek, & Overflow NWR

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✓	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✓	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?		✓
(d) Is the use consistent with public safety?	✓	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?		✓
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✓	
(g) Is the use manageable within available budget and staff?		✓
(h) Will this be manageable in the future within existing resources?		✓
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?		✓
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?		✓

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ☐ No ☒

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate ☒

Appropriate ☐

Refuge Manager: Michael Shoet

Date: 6/15/16

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor: Richard G. Ingram

Date: 6/15/16

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

Finding of Appropriateness of a Refuge Use

Location: South Arkansas NWR Complex

Proposed Use: Use of unmanned aircraft/drones

Determination: Not Appropriate

Justification:

The regulations listed below were used in this determination where the use of unmanned aircraft/drones on South Arkansas NWR Complex (Complex) was not considered to be appropriate.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, provides guidelines and directives for administration and management of all areas in the National Wildlife Refuge System, which includes “wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas.” In managing the National Wildlife Refuge System, the U.S. Fish and Wildlife Service (Service) must “assure that any present or future recreational use will be compatible with, and will not prevent accomplishment of, the primary purposes for which . . . conservation areas were acquired or established. . . .” Congress has authorized the Secretary of the Interior “to administer such areas or parts thereof for public recreation when in his judgment public recreation can be an appropriate incidental or secondary use. . . .” Thus, national wildlife refuges are considered “closed” to recreational uses unless and until a Refuge Manager makes a positive compatibility determination.

“All national wildlife refuges are maintained for the primary purpose of developing a national program of wildlife and ecological conservation and rehabilitation.” Pursuant to its authority to limit recreational use of areas within the National Wildlife Refuge System, the Service has promulgated regulations which prohibit refuge visitors from engaging in certain activities on refuge lands. Specific regulations that apply to the aforementioned determination include:

- 1) 50 C.F.R. § 27.34 prohibits “[t]he unauthorized operation of aircraft, including sail planes, and hang gliders, at altitudes resulting in harassment of wildlife, or the unauthorized landing or take-off on a national wildlife refuge, except in an emergency, is prohibited.” Importantly, there is no definition of “aircraft” in the National Wildlife Refuge System regulations at 50 C.F.R. Chapter I, Subchapter C, which covers the National Wildlife Refuge System. However, the term is defined in 50 C.F.R. Chapter I, part 10, Subpart B. where “aircraft” is defined as “any contrivance used for flight in the air.” This definition is consistent with Webster’s Dictionary (2013) definition of

“aircraft” as “any machine supported for flight in the air by buoyancy or the dynamic action of air on its surfaces, especially powered airplanes, gliders, and helicopters.”

Thus, the common meaning of the term aircraft is broad enough to include manned and unmanned aircraft.

- 2) 50 C.F.R. § 27.51 prohibits “[d]isturbing, injuring, spearing, poisoning, destroying, collecting or attempting to disturb, injure, spear, poison, destroy or collect any plant or animal on any national wildlife refuge . . . except by special permit. . . .”
- 3) While 50 C.F.R. § 26.32 permits recreational uses, including “nature observation and photography” on refuge lands, but only after a finding by each Refuge Manager that the recreational uses are compatible with the purposes of that particular refuge. Visitors to refuge lands using unmanned aircraft while engaging in “commercial filming and still photography” must satisfy all applicable permit requirements set forth at 43 C.F.R. § 5.1, and failure to do so is a violation of 50 C.F.R. §27.71. 43 C.F.R. § 5.12 defines “commercial filming” as “the . . . recording of a moving image by a person, business, or other entity for a market audience with the intent of generating income.” Under these regulations, those required to obtain a permit for such commercial activities must pay a fee and agree to reimburse the government for any costs it incurs.

Flying aircraft over or near wildlife can create stress that may cause significant harm and even death. Intentional disturbance of wildlife during breeding, nesting, rearing of young or other critical life history functions cannot be tolerated and would be in violation of 50 CFR 27.34 and 27.51. Although research is limited on the impacts of drones or unmanned aircraft known as Unmanned Aerial Systems (UAS), the Service has an internal website (<https://sites.google.com/a/fws.gov/region-1-unmanned-aerial-systems-uas-resource-guide/wildlife-disturbance>) that lists existing research dealing with wildlife disturbance and drones that was considered in this determination.

The use of drones/UASs is considered a general use that is not a priority public use of the National Wildlife Refuge System. It does not, as a stand-alone activity, contribute to the fulfillment of refuge purposes at South Arkansas NWR Complex. Additionally the proposed use would detract from the refuge staff’s responsibilities to protect and manage fish, wildlife, plants and their habitats and the administration of priority uses. The refuge does not have the facilities or staff to manage this use. With declining staff and budgets, this use is not manageable under current or foreseeable budgets.

The use of drones/UASs also is not consistent with goals and objectives of these refuges as identified the CCP/HMPs’ which focus on migratory birds, at risk species, and threatened and endangered species. Further, this use is not consistent with Service policy on secondary uses

and is not consistent with any approved management plan. Therefore, the general use of drones on the South Arkansas Refuge Complex is determined to be not appropriate.

References

USFWS. 1999 Pond Creek NWR Comprehensive Conservation Plan, Lockesburg, AR.

USFWS. 2010 Felsenthal and Overflow NWRs Comprehensive Conservation Plan, Crossett, AR.

USFWS. 2014 Habitat Management Plan, Pond Creek NWR. Lockesburg, AR.

USFWS. 2015 Habitat Management Plan, Felsenthal NWR, Crossett, AR.